IN THE HIGH COURT OF JUDICATURE AT PATNA
MA No.141 of 2005
SABHAPATI YADAV & ORS
Versus
BHAWANI DEVI & ORS

15/ 26.09.2008 Heard learned counsel for the appellant, who has come here to set aside the order dated 14.12.2004 passed in Title Appeal No. 10 of 1981 by the learned Additional District Judge-VII, Bhagalpur, whereby and whereunder the learned court below has allowed the petition filed by the respondents who are appellants here, under Order 39 Rules 1 and 2 Section 151 of the CPC, and thereby respondents (who are appellants here) were restrained from disturbing the peaceful possession of the appellants/respondents till disposal of this appeal.

Nobody appears for the respondents although, name of the counsel appearing in the cause list.

It has been submitted that these appellants who got a decree for declaration of title and recovery of possession were handed over possession of land in question by the respondents themselves when execution case was filed in the year 1982.

From the record it appears that, these appellants who were respondents in the first appellate court had earlier filed a title suit bearing No. 2 of 1969 before Sub-Judge-I, Bhagalpur, for declaration of title and recovery of possession. The suit was decreed on 12.12.1980 and against that order the appeal was preferred. The respondents (who are appellants here) filed Title Execution Case No.

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13 of 1982 for execution of the said decree in order to recover the possession of the suit property but that execution case was stayed by the appellate court vide its order dated 13.08.1982.

Here argument has been advanced on behalf of the appellants that as a matter of fact during pendency of such execution case the possession of the land in question was handed over to these appellants by the judgment debtors- defendants/respondents since then they have been coming in possession of the land in question and so the impugned order, restraining them from disturbing the peaceful possession of the judgment debtors- respondents is not in accordance or in consonance with law.

The learned counsel for the appellants has submitted that no such paper has been created so as to show that delivery of possession was given to these appellants by the judgment debtors. In the facts and circumstances, when execution proceeding has been stayed by the first appellate court, presumption would be that defendants-judgment debtors who are respondents here are still in possession of the land in question.

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So, considering the aforesaid facts and circumstances, I do not find any illegality or jurisdictional error in the impugned order, and, so no interference in required. However, it is made clear in view of further argument made on behalf of the appellant is that this appeal is of the year 1981 and the matter is still pending in the court below so necessary order for early disposal be passed.

Having considered aforesaid facts and circumstances, the

first appellate court is directed to dispose of this appeal preferably within six months from the date of communication of this order.

With the aforesaid observation and direction, the appeal is, accordingly, dismissed.

(Subash Chandra Jha, J.)

Sanjeet

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